TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 103

THE FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, PLAINTIFF IN ERROR,

vs.

JOHN W. WATT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JULY 9, 1900.

(17,826.)

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1 Supreme Court of the State of Minnesota.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

The First National Bank of Lake Benton, Minnesota, defendant in the above-entitled cause, feeling itself aggrieved by the judgment entered on the 12th day of May, 1900, comes now by Davis, Kellogg & Severance, its attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

JOHN McKENZIE &
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendant.

2 [Endorsed:] John McKenzie & Davis, Kellogg & Severance, att'ys for petitioner.

3 STATE OF MINNESOTA:

Supreme Court, April Term, 1900.

Present: The Honorable Charles M. Start, chief justice.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

Upon motion of Davis, Kellogg & Severance, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is fixed at five hundred dollars.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

4 STATE OF MINNESOTA:

Supreme Court, April Term, 1900.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

Comes now the defendant, and files the following assignments of error upon which it will rely in the prosecution of the writ of error in the above-entitled cause,

First. The court erred in entering said judgment for the amount claimed in the complaint, the same being for twice the interest paid by respondent to appellant.

Second. The court erred in holding that under sections 5197 and 5198, Revised Statutes of the United States defendant and appellant is liable for double the amount of the interest paid instead of double the amount of usurious interest paid.

JOHN McKENZIE &
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendant.

5 [Endorsed:] State of Minnesota supreme court. John W. Watt *v.* The First National Bank of Lake Benton, Minnesota. John McKenzie & Davis, Kellogg & Severance, att'ys for petitioner.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The First National Bank of Lake Benton, Minnesota, defendant, and plaintiff in error, and John W. Watt, plaintiff, and defendant in error, wherein was drawn in question the construction of a clause of the statute of the United States, and the decision was against the right, title, privilege or exemption specially set up or claimed under such clause of the statute, a manifest error hath happened to the great damage of the said First National Bank of Lake Benton, Minnesota, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington in the District of Columbia, on the 14th day of June, 1900, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid,

being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and accord-
7 ing to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the fourteenth day of May, 1900.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

8 [Endorsed:] Writ of error. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

9 STATE OF MINNESOTA:

Supreme Court.

The State of Minnesota to John W. Watt and F. L. James, his attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be held at the city of Washington in the District of Columbia, United States of America, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The First National Bank of Lake Benton, Minnesota, is the plaintiff in error, and you John W. Watt are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, at the capitol in the city of St. Paul, this 14th day of May, A. D. 1900.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

10 [Endorsed:] Original. State of Minnesota supreme court. John W. Watt *vs.* First Nat'l Bank of Lake Benton, Minn. Citation. Due service of the within citation admitted this — day of May, 1900. F. L. James, att'y for def't in error. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

11 STATE OF MINNESOTA:

Supreme Court.

FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Plaintiff in Error,
vs.
JOHN W. WATT, Defendant in Error.

Know all men by these presents, that we, the First National Bank of Lake Benton, Minnesota, as principal, and Hans Lavesson and

Kittel G. Skartum, as sureties, are held and firmly bound unto John Watt above named, in the sum of five hundred dollars, to be paid to the said John W. Watt, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our representatives, successors and assigns, firmly by these presents.

Sealed with our seals and dated the third day of May, 1900.

Whereas, the above-named plaintiff in error has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above-entitled cause by the supreme court of the State of Minnesota.

Now therefore, the condition of this obligation is such that if the above-named, The First National Bank of Lake Benton, Minnesota, shall prosecute said writ to effect, and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FIRST NATIONAL BANK OF LAKE
BENTON, MINN., [SEAL.]
By J. B. SULLIVAN, *Cashier.* [SEAL.]
HANS LAVESSON. [SEAL.]
KITTLE G. SKARTUM. [SEAL.]

In presence of—

L. P. JOHNSON.
C. A. ADAMS.

12 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it known, that on this 12th day of May, 1900, came before me personally Hans Lavessen & Kittle G. Skartum to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his own free act and deed.

L. P. JOHNSON,
Notary Public, Minn. [SEAL.]

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Hans Lavessen and Kittle G. Skartum came before me personally, and being by me first duly sworn, doth say each for himself, that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota, and worth the amount of five hundred dollars specified in the foregoing bond, above his debts and liabilities, and exclusive of his property which is exempt from execution.

HANS LAVESSEN.
KITTLE G. SKARTUM.

Subscribed and sworn to before me this 12th day of May, 1900.

L. P. JOHNSON,
[SEAL.] *Notary Public, Hennepin County, Minnesota.*

13 [Endorsed:] Supreme court State of Minnesota. First National Bank of Lake Benton Minn. plaintiff in error *vs.* John W. Watt defendant in error. Copy of bond on writ of error. I hereby approve the within bond, and the sureties thereon. Dated May 14, A. D. 1900. Chas. M. Stuat chief justice. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

14 *Assignment of Errors.*

1. The court erred in instructing the jury that "if the jury find from the evidence that any amount included in plaintiff's note, Exhibit 'A,' in excess of ten per cent. was knowingly included by the defendant for the loan or forbearance of the money to the
15 plaintiff, then the plaintiff is entitled to recover of the defendant twice the amount of interest thus paid by plaintiff. It is proved without contradiction that on the 23rd. day of October, 1897, the plaintiff paid to the defendant $1,603.20, the full amount due on his note, Exhibit 'A,' and if the plaintiff recover, he is entitled to recover twice the amount of interest included in this amount so paid." (Folios 247 and 248. Paper book.)

2. The court erred in refusing to give defendant's first request for instructions. (Folio 253. Paper book.)

3. The court erred in refusing to give defendant's second request for instructions. (Folios 254 and 255. Paper book.)

4. The court erred in denying defendant's motion for new trial on the ground: 1st—That the verdict is not justified by the evidence. 2nd—That the verdict is contrary to law, and 3rd—Error in law occurring at the trial and excepted to by the defendant.

5. The court erred in entering said judgment for the amount claimed in the complaint, the same being for twice the interest paid by respondent to appellant.

6. The court erred in holding that under sections 5197 and 5198, Revised Statutes of the United States, appellant is liable for double the amount of the interest paid instead of double the amount of usurious interest paid.

In support of its position with reference to the assignments of error appellant cites the following authorities.

Heintermister *vs.* National Bank 64 N. Y. 212; 2 Lawson's Rights and Remedies, 518; Lynch *vs.* Merchants' National Bank, 22 West Va., 554; Bobo *vs.* People's National Bank, 21 S. W., 888 and Hardin *vs.* Tremmer, 30 So. Car., 391.

Respectfully submitted.

DAVIS, KELLOGG & SEVERANCE,
St. Paul, Minnesota, and
JOHN McKENZIE,
Lake Benton, Minnesota,
Appellant's Attorneys.

16 Supreme Court, State of Minnesota, April Term, 1899.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Appellant.

F. L. Janes, Pipestone, Minnesota, respondent's attorney. John McKenzie, Lake Benton, Minnesota, appellant's attorney.

Notice of Motion for New Trial.

STATE OF MINNESOTA, *County of Lincoln*, } ss:

District Court, Ninth Judicial District.

To F. L. Janes, Esq., Pipestone, Minn.:

You will please take notice that the within is defendant's proposed case and bill of exception in the above cause which will be presented to the Hon. B. F. Webber, judge of said court, at the court-house in the city of St. Peter, Nicollet county, said State, on November 22d, 1899, at four o'clock p. m., on said day, or as soon thereafter as counsel can be heard for settlement, allowance and signature.

That at said place upon said case and bill of exceptions, when settled and allowed and immediately after said settlement
17 and allowance defendant on said case and the pleadings in said cause will move said court and the Hon. B. F. Webber, judge thereof, for a new trial on the following grounds, to wit:

1st. That the verdict is not justified by the evidence.

2nd. That the verdict is contrary to law.

3rd. Error in law occurring at the trial and excepted to by the defendant.

Dated November 2d, 1898.

JOHN McKENZIE,
Defendant's Attorney, Lake Benton, Minn.

Complaint.

The plaintiff complains of the defendant, and alleges:

I.

That the defendant now is, and at all of the times hereinafter stated was a corporation duly organized and existing under the laws and regulations of the United States concerning national banks, having its office and principal place of business in the village of Lake Benton, Lincoln county, Minnesota.

II.

The plaintiff further alleges that on the 31st day of December, 1896, at said Lake Benton, the said plaintiff made, executed and delivered to said defendant, his certain promissory note in writing,

being dated on that day, wherein and whereby he promised and agreed to pay said defendant on the first day of July, 1897, the sum of fourteen hundred and eighty dollars ($1,480.00), and which note by its terms bore interest from the date thereof at the rate of ten per cent. per annum, and for the purpose of securing the payment of said note, the said plaintiff at said time of the execution and delivery of the said note, made, executed, acknowledged and delivered to defendant a real-estate mortgage in the ordinary and usual form, wherein
and whereby the said plaintiff bargained, sold, mortgaged
18 and conveyed to the defendant the west half of section five (5), in township one hundred and eight (108), north of range forty-four (44), in Pipestone county, Minn., then owned by plaintiff, and which mortgage was conditioned that upon the payment of said sum of fourteen hundred and eighty dollars, with interest thereon at ten per cent., according to the terms of said note, said mortgage should be void and of no effect, and further conditioned that if default should be made in the payment of said sum, then defendant might sell said premises as provided by law, and the said note and interest to be paid out of the proceeds of the sale of said premises, and also executed and delivered in due form of law, a chattel mortgage on a large number of horses, cattle and hogs, and other personal property then owned and possessed by said plaintiff, which chattel mortgage ran to said defendant and was made to secure the payment of said promissory note, and which chattel mortgage was thereafter on January 5th, 1897, duly filed by said defendant in the town clerk's office of the township of .Etna, in Pipestone county, Minnesota, where said plaintiff then resided, the sole and only consideration for the execution of said note and mortgages being the usurious agreement for the loan of a sum of money for the satisfaction and payment of a certain note and mortgage as is particularly hereinafter set forth, to wit: That on the 26th day of September, 1895, one Wilson Watt was the owner of said described premises, and on that date the said Wilson Watt was indebted to defendant on past-due obligations, amounting in the sum of twelve hundred and eighty dollars ($1,280.00), and on said date the said Wilson Watt executed and delivered to said defendant his promissory note in writing wherein and whereby he promised to pay to said defendant the said twelve hundred and eighty dollars on the first day of November, 1896, with interest at ten per cent. per annum from said September 26th, 1895, and for the purpose of securing the payment of said note,
the said Wilson Watt and wife duly executed and delivered to
19 defendant a mortgage on said real estate in the usual and ordinary form, which mortgage was thereafter and on the 28th day of September, 1895, duly recorded in the office of the register of deeds in and for said Pipestone county, in Book 13 of Mortgages, on page 44 therein, and that thereafter and on the 21st day of November, 1895, the said John W. Watt, this plaintiff, duly purchased said premises of said Wilson Watt for a valuable consideration, and the said Wilson Watt and his wife duly transferred and conveyed said described premises to this plaintiff by warranty deed, dated said November 21st, 1895, and by the terms of which deed the said guar-

antee therein, this plaintiff contracted and agreed to pay to said defendant, the said note and mortgage of twelve hundred and eighty dollars aforesaid, then a lien on said premises as a part of the consideration of the said transfer and sale by said Wilson Watt to this plaintiff.

And plaintiff alleges that on said December 31st, 1896, there was due on said twelve hundred and eighty dollar note and mortgage the sum of twelve hundred and eighty dollars with interest at ten per cent. from September 26th, 1895, amounting at that date to fourteen hundred forty-one and $\frac{77}{100}$ dollars ($1,441.77), and no more, which amount said plaintiff was obliged to pay to said defendant aforesaid, and that in payment and satisfaction of the said amount of fourteen hundred forty-one and $\frac{77}{100}$ dollars, as aforesaid, then due and owing on said note and mortgage of twelve hundred eighty *and* dollars, the said plaintiff made, executed and delivered to said defendant, the said fourteen hundred and eighty dollar note and mortgage before referred to, solely upon the mutual, usurious agreement made between the said defendant and this plaintiff on said December 31st, 1896, at said Lake Benton, that the said defendant should satisfy and discharge said twelve hundred and eighty dollar note and mortgage of record and should accept in lieu thereof the said fourteen hundred and eighty dollar note and mortgages of this plaintiff, and which defendant did, and that this plaintiff should pay a bonus of thirty-eight and $\frac{23}{100}$ dollars ($38.23) for said loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, or satisfaction of said mortgage over and above the interest at ten per cent. per annum stipulated and contained in said note of said defendant, and that said defendant should take, secure and receive to itself for said loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, from said December 31st, 1896, to said July 1, 1897, a bonus of thirty-eight and $\frac{23}{100}$ dollars, over and above the interest at ten per cent. per annum so provided for in said note, and a greater sum than ten per cent. per annum, to wit: the sum of five and three-tenths per cent. per annum for the entire time said loan and note were to run, that is to say: that the said plaintiff agreed to pay, and the said defendant agreed to receive the sum of thirty-eight and $\frac{23}{100}$ dollars bonus as extra interest on said loan, or five and three-tenths per cent. per annum for the six months said loan or note was to run, over and above the said rate stipulated in said note as interest for said note, and the said bonus of thirty-eight and $\frac{23}{100}$ dollars was added to said sum of fourteen hundred forty-one and $\frac{77}{100}$ dollars, making the total sum of said note fourteen hundred and eighty dollars as aforesaid, the said defendant thereby actually taking, reserving, receiving and securing to itself for the loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, the sum of fifteen and three-tenths per cent. per annum for the entire time said note or loan was to run as interest thereon, and that in pursuance of said corrupt and usurious agreement and for the purpose of carrying the same into effect, the said plaintiff executed and delivered to said defendant the said note of fourteen hundred and eighty dollars, and the mortgages securing the same as aforesaid, and the said defendant promised and agreed to satisfy and discharge the said twelve hundred and eighty

dollar note and mortgage of record as aforesaid, and to accept the said fourteen hundred and eighty dollar note and mortgages
21 securing the same in lieu thereof, and the whole of said debt was to be extended until July 1st, 1897, as aforesaid.

And the plaintiff further alleges that on the 23rd day of October, 1897, in pursuance of said usurious contract he paid to the said defendant the said fourteen hundred and eighty dollar note with interest at ten per cent. thereon from the said date thereof to the said date of payment, amounting on said October 23, 1897, to the sum of sixteen hundred three and $\frac{20}{100}$ dollars (1,603.20) which sum was paid by plaintiff to defendant and at the same time the said plaintiff, as a part of said sixteen hundred three and $\frac{20}{100}$ dollars, paid to said defendant the said bonus of thirty-eight and $\frac{23}{100}$ dollars, with interest at ten per cent. from December 31, 1897, as and for interest in excess of and in addition to the legal rate of ten per cent. per annum for the loan and forbearance of said fourteen hundred forty-one and $\frac{77}{100}$ dollars, and the defendant then and there knowingly received and retained said payment of money in excess of and in addition to the highest legal rate of interest, and said defendant then and there marked said note paid and surrendered the same to the plaintiff, and satisfied and discharged said mortgages securing the same.

III.

And the plaintiff alleges that on the 23rd day of October, 1897, he paid to the defendant the sum of one hundred sixteen and $\frac{50}{100}$ dollars, legal interest at the rate of ten per cent. on said note, dated December 31st, 1896, and the sum of forty-five dollars (45.00), as interest or bonus in excess of and in addition to the highest legal rate of interest, and the plaintiff alleges that each and every one of the aforesaid payments were knowingly taken and received by the defendant and retained by it respectively as legal interest, and as interest in excess of and in addition to the highest legal rate of interest.

And the plaintiff further alleges that each of said sums so
22 as aforesaid paid by him to the defendant as interest, legal and illegal, were so paid at the special instance and request of the defendant, and because said defendant insisted upon the payment and each of them being made as aforesaid by plaintiff, and the plaintiff alleges that by virtue of the laws of the United States concerning national banks, an action hath accrued to the plaintiff to sue for and recover of the defendant twice the aforesaid sums of money paid as aforesaid to the defendant by the plaintiff as interest, legal and illegal, on the 23rd day of October, 1897, and each and every of which several sums the defendant knowingly received and retained contrary to the statute in such case made and provided; and the plaintiff further alleges that by force of the statute, the defendant is indebted to the plaintiff in the sum of three hundred and twenty-three dollars ($323.00), with interest from the 23rd day of October, 1897.

Wherefore, the plaintiff demands judgment against the defendant

for the sum of three hundred and twenty-three dollars, being twice the amount of interest paid defendant by plaintiff on the 23rd day of October, 1897, with interest thereon from the said 23rd day of October, 1897, and for the costs and disbursements of this action.

Dated August 9th, 1898.

F. L. JONES,
Plaintiff's Attorney.

Duly verified.

Answer.

For answer to the complaint herein defendant denies each and every allegation — said complaint contained, save only as hereinafter expressly admitted.

Defendant admits that it is a banking corporation and that plaintiff and Wilson Watt made and delivered the notes and mortgages described in said complaint.

23 Wherefore defendant prays that plaintiff recovers nothing in this action, and that it have its costs and disbursements.

Dated September 6th, 1898.

JOHN McKENZIE,
Defendant's Attorney, Lake Benton, Minn.

Duly verified.

EXHIBIT 1.

$1,480.00. LAKE BENTON, MINN., *Dec.* 31, 1896.

July 1st, 1897, after date I promise to pay to the order of the First National Bank of Lake Benton fourteen hundred eighty dollars at the office of the First National Bank of Lake Benton. Value received with interest before and after maturity at the rate of ten per cent. per annum until paid. Interest payable annually. Interest to draw interest at the rate of ten per cent. if not paid when due.

JOHN W. WATT.

EXHIBIT 4.

$1,280.00. LAKE BENTON, MINN., *Sept. 26th*, 1895.

November 1st, 1896, after date I promise to pay to the order of the First National Bank of Lake Benton twelve hundred eighty dollars at the office of the First National Bank of Lake Benton. Value received with interest before and after maturity at the rate of ten per cent. per annum until paid. Interest payable annually. Interest to draw interest at the rate of ten per cent. if not paid when due.

WILSON WATT.
C. S. WATT.

EXHIBIT 6.

FIRST NATIONAL BANK OF LAKE BENTON,
LAKE BENTON, MINN., *October 6th*, 1897.

Will Watt, Ruthton, Minn.

DEAR SIR: We are in receipt of a letter today from Mr. Creglow. He does not appear to understand this land deal between
24 ourselves and you. I sent him a statement on the 18th of Sept. showing the amount due on that date to be $1,620.60. It will be necessary for you either to come up here at once or else write him stating that our account of the amount due on the mortgage is correct and ask him to pay us at once. We have been waiting quite a while for this matter to be fixed up and wish you to attend to it immediately. The amount due at present is $1,622.00. Will you kindly drop a line to Mr. Creglow stating that that amount is correct and send us a draft for it. You had better come up as soon as you can and we will figure the matter over.

Yours truly, J. B. SULLIVAN, *Cashier.*

(Dictated.)

EXHIBIT 7.

RUTHTON, MINN., 2, 25.

First nat'l bank, Lake Benton, Minn.:

Please send me the old note and mortgage and oblige.

J. W. WATT.

LAKE BENTON, MINN., *Feb. 27th*, 1897.

DEAR SIR: I have not been over to Pipestone yet and cannot deliver old papers until I find everything straight.

Yours truly, J. B. SULLIVAN, *Cashier.*

EXHIBIT 8.

Prin.	1,480
Int. to due	74
	$1,554
Int. to date	49.20
	1,603.20

EXHIBIT 9.

This indenture, made this 21st day of November in the year of our Lord one thousand eight hundred and ninety-five, be-
25 tween Wilson Watt and Catharine S. Watt, his wife, parties of the first part, and John William Watt, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of one dollar, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged,

do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all that tract and parcel of land lying and being in the county of Pipestone and State of Minnesota, described as follows, to wit: The west one-half (W. ½) of section five (5) in township one hundred and eight (108) north of range forty-four (44) west of 5th P. M.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part his heirs and assigns forever. And the said Wilson Watt and Catherine S. Watt, his wife, parties of the first part, for themselves or their heirs, executors and administrators, do covenant with the said party of the second part, their heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances; except mortgages amounting to about $3,700.00, which second party is to pay, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILSON WATT.
CATH-RINE S. WATT.

Signed, sealed and delivered in presence of—
P. P. CADY.
FRANK E. MILLARD.

26 STATE OF MINNESOTA, }
Pipestone County, } ss:

I, P. P. Cady, a notary public within and for said county, do hereby certify that on this 21st day of November, A. D. 1895, personally came before me Wilson Watt and Catharine S. Watt, his wife, to me well known as the same persons described in and who executed the foregoing deed, and they acknowledged that they executed the same freely and voluntarily.

P. P. CADY,
Notary Public.

Transcript.

STATE OF MINNESOTA, }
County of Lincoln. }

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

This case came duly on for trial and determination before the Hon. B. F. Webber, judge, with a jury, at the regular October 1898

term of said district court, held in and for the county of Lincoln, at the village of Lake Benton, this 19th day of October, 1898.

F. L. Janes, Esq., appearing as attorney for the plaintiff.

John McKenzie, Esq., appearing as attorney for the defendant.

Jury duly empanelled and sworn at 3.45 p. m.

Mr. Janes opens *opens* the case to the jury.

J. B. SULLIVAN called for cross-examination under the statute. Duly sworn.

Cross-examination by Mr. JANES:

Q. What is your name, Mr. Sullivan, initials?

A. J. B. Sullivan.

Q. What is your business?

A. Cashier of the First national bank of this town.

Q. Of Lake Benton, the defendant in this action?

27 A. Yes sir.

Q. Where is your place of business?

A. It is at Lake Benton.

Q. That has been its place of business since the organization of the bank, has it?

A. What is that?

Q. That has been its place of business since the organization of the bank?

A. Yes sir.

Q. How long have you been cashier of that bank?

A. Since January, '97; January 1st; about January 1st, '97.

Q. About January 1st, '97?

A. Yes.

Q. What position did you occupy before that time?

A. I didn't have any position; I was simply assistant in the bank.

Q. Were you the cashier?

A. No sir.

Q. You have had charge of a portion of the business there, did you?

A. I assisted since June previous.

Q. What is that?

A. I assisted in the bank since the June previous.

Q. Who was the cashier at that time?

A. John S. Tucker.

Q. You transacted the business for the bank at that time; some business?

A. I did some business, I had no supervision at all.

Q. What business you did you did under the supervision of Mr. Tucker, then?

A. Yes.

Q. And what business you did do was ratified by Mr. Tucker, wasn't it?

A. There wasn't anything said particularly, or done.

Q. He knew of what you did?

A. I don't know; I think so.

28 Q. He looked over your work at different times, didn't he? Looked into the loans you had made? Just answer yes or no?

A. Well, I don't know that he did look into all loans.

Q. He did into some?

A. Yes sir.

Q. You talked over with him the business at times that you had done?

A. Yes.

Q. You know the plaintiff here, John Watt?

A. Yes sir.

Q. Do you remember having a business transaction with him on behalf of the bank in December, on December 31st, 1896?

A. How is that?

Q. On December 31st, 1896?

A. '96, with this man here?

Q. Yes sir.

A. Why, I don't really know whether that was the date.

Q. Do you ever remember of having business transaction with him?

A. I had some transaction with him, but I don't remember just exactly now what the date was.

Q. Do you remember what conversation was had between you and him regarding that transaction?

A. Which transaction?

Q. Regarding the loan on some land in Pipestone county.

A. Yes.

Q. Note marked Ex. "12" ("1"); look at Ex. "1" and tell me if that is in your handwriting?

A. Yes sir, I think it is.

Q. Don't you know it is your handwriting?

A. Why, I believe it is.

Q. Don't you know it as a fact?

A. Why, I have no reason to doubt it.

Q. Will you swear it isn't your handwriting?

29 A. No sir.

Q. Will you swear it is your handwriting?

A. I rather swear it is than it is not.

Q. It is your impression then it is your handwriting, is it?

A. Yes sir.

Q. Do you know what that is on there, that stamp on Ex. "1"?

A. In what way do you mean? What it reads?

Q. Yes.

A. (Examines exhibit.) First National Bank, Lake Benton, Minn., paid October 23rd 1897.

Q. Is that the stamp that was placed on the note at the time it was paid by the bank; stamped?

A. I think so.

Q. Is that the stamp that is used by your bank in cancelling notes when they was paid?

A. Yes sir; supposed to be the stamp.
Q. Then that note was paid at the time it appears to be stamped?
A. I presume so; unless there was something wrong with the date in the stamp, but I don't think so.

Mr. JANES: We offer in evidence Ex. "1" as part of the case.
No objection.

Q. Now, Mr. Sullivan, at the time that Ex. "1" was made by you the plaintiff here signed it, did he?
A. Which, this note that you showed me?
Q. Yes.
A. I think he did.
Q. Don't you know he did?
A. If that is the same paper, or supposed to be, he did.
Q. Haven't you a good memory, Mr. Sullivan?
A. Pretty fair.
Q. Are you in any doubt as to the fact that that is the signature of the plaintiff here?
A. No sir; I am not.
Q. You have no doubt about it?
A. No.
Q. At the time that the plaintiff signed that did he give you a real-estate mortgage on some land in Pipestone county?

Objected to as irrelevant and immaterial.
Mr. JANES: I think it is part of the *res gestæ*.
By the COURT: What is the purpose of it?
Mr. JANES: The purpose of it is to show that there was a general transaction by which this note was given and the security that was given at the same time.
By the COURT: If he has taken a note and the usury is included in the note and it has been paid, I don't see how the security given would be material.
Mr. JANES: Not material except in so far as the transaction is concerned. I don't think I need to inquire of the witness relative to this because it is admitted by the pleadings that these notes were given.
By the COURT: It seems to me that the mortgage would only encumber the record and not add anything to the case. He admits the execution of the note.
Mr. JANES: I think, perhaps, that they admit the execution of the mortgage. I just want to identify these.
By the COURT: You can identify them.

Q. Look at Exhibits "2" and "3."
By the COURT: One real estate and the other chattel mortgage.
Q. Yes sir. Look at Ex. "2," is that in your writing?
A. I think it is.
Q. Don't you know it is?
A. I know it just as much as I can know.
Q. Well, in fact you know it?
A. Well, I presume it was; rather swear it was than it was not.

Q. Look at Ex. "3," is that in your handwriting?

A. I think so; the same as the other. Let me examine the other again.

Q. These Ex. "2" and "3" were signed by the defendant in your presence, were they not?

31 A. Yes sir.

Q. And the note that is described in Ex. "2" and "3" is Ex. "1," is it not?

A. That is the same, yes.

Q. Then, Mr. Sullivan, on December 31st, 1896, you did meet the plaintiff, did you not, in the bank here, in the First national bank?

A. Yes sir.

Q. At that time the plaintiff came to you, or to your bank and stated to you that he desired to give additional security and get an extension on the provisions of the mortgage of $1,280 which your bank held on the real estate described in the complaint, did he not?

A. I don't think so.

Q. Will you swear that he didn't say so?

A. Repeat your question once more.

Q. Read the question.

Question read.

A. The note described in the complaint is what? The note of his father's?

Q. Yes.

A. I don't think that he stated he wanted to give any additional security.

Q. He told you that he wanted—the plaintiff told you at that time that he could not pay that note of his father's, didn't he?

Mr. McKENZIE: These questions are leading.

By the COURT: It is cross-examination; it is proper on cross-examination.

Q. Read the question.

Question read.

A. Well, I don't know whether he—I don't remember that he stated that he couldn't pay it.

Q. He told you at that time that he had a deed of the land that secured it? That you had security on for the father's note, did he not?

A. I think he told me that he had bought his father's farm.

32 Q. You knew it was the land on which the bank had security for the loan made to the father of the plaintiff, did you not?

A. I presume it was the same piece.

Q. Look at Ex. "4."

(Examines exhibit.)

Q. Is that the note referred to as being the indebtedness by the

father of the plaintiff, Wilson Watt, to the defendant in this action?
A. I think it is.
Q. Marked Ex. "5." Look at Ex. "5;" is that the mortgage on the real estate described in the complaint securing Ex. "4"?
A. I don't remember the description of the land at present.
Q. You can see whether it is the security for Ex. "4"?
A. Appears to be.

Mr. McKENZIE: Object, your honor, to this inquiry on the ground that it is irrelevant and immaterial.
Objection overruled.

Q. Do you know personally, Mr. Sullivan, anything about this loan made to Wilson Watt, the father of the plaintiff, for which Ex. "4," the $1,280 was given?
A. Let me have the question once more.

Question read.

A. I know nothing, except what I see there.
Q. This note—when you went into the bank in '96 this note and mortgage securing it were in the bank, were they not?
A. I think they were.
Q. What is it?
A. I think they were.
Q. On the 31st day of December, '96, at the time you say the plaintiff came to the bank, it was regarding this $1,280 note, was it not, that he talked with you there that day, Ex. "4"?
A. No, he come on his own personal business.
33 Q. Didn't he talk with you a while there about Ex. "4"?
A. He told me——
Q. Answer the question, yes or no?
A. How is that?
Q. Answer the question, please. Read the question.

(Question read.)

A. Yes, he did.
Q. Didn't he tell you at that time that he would give the bank, the defendant here a note and mortgage on that land that he got of his father, the same land that you then had security on, described and securing Exhibit "4," and get time until the following July?
A. No, sir, that wasn't the conversation.
Q. You didn't have any such conversation with the plaintiff?
A. Not just as you state.
Q. At that time you did take a $1,480 note in lieu of the $1,280 note, Ex. "4," did you not?
A. I think I did.
Q. Did you compute the interest on December 31st on Ex. "4" and tell the plaintiff how much was then due thereon?
A. I think I did.

Mr. JANES: We offer Ex. "4" in evidence.
No objection.

Q. Do you now know the amount that you found due on this $1,280 note at that time?

A. Not that I remember.

Q. You don't remember?

A. No.

Q. Can you tell this jury how much was due on this note on that day? Figure it out?

A. I think I can't figure up here what I charged him.

Q. You can't figure up here what you charged him?

A. No, I don't remember.

Q. You don't remember that you can?

A. No.

34 Q. Didn't you agree with—on behalf of the defendant, the bank, to satisfy and discharge of record the mortgage securing Ex. "4," the $1,280 note, when you had the mortgage, Ex.—mortgages Exhibits "2" and "3" recorded and filed respectfully?

A. That I would release——

Q. Read the question.

Question read.

Mr. McKenzie: The defendant objects to that on the groud that it is incompetent, irrelevant and immaterial.

Objection overruled. Exception by defendant.

Q. Answer the question, yes or no, Mr. Sullivan. Read the question again.

Question read.

A. I don't know whether I talked with him about satisfying them or not.

Q. You don't remember whether you did or not?

A. No.

Q. Do you remember of the plaintiff coming to the bank on the 23rd day of October, 1897, and paying to you as cashier of the bank $1,603.20 in payment of the $1,480 note?

A. He came to the bank and——

Q. Answer the question, yes or no?

A. I can't answer it yes or no on account of the date. I presume it is the same date.

Q. Look at the note?

A. Yes sir; I remember being there.

Q. Read the previous question.

Question read.

By the Court: That is Ex. "1"?

Q. Ex. "1;" only one $1,480 note. What was your answer to that, yes or no?

A. Well, I intend to answer yes, then; barring the date, I don't remember, but from the looks of the paper I would say yes.

Q. You would say it was on October 23rd, 1897?

A. Yes.

Q. And that is the amount he paid you?

A. I can't just exactly remember that; he paid me whatever was due on it.

Q. $1,603.20?

35 A. Sixteen hundred dollars and something.

Q. At that time you stamped the $1,480 note "paid" and gave it to the plaintiff, did you not, Mr. Sullivan?

A. I think I did.

Q. Now then, Mr. Sullivan, this note, $1,480, was entered upon your books in the books of "bills receivable," was it not?

A. Yes sir, "bills receivable."

Q. That is the number of it?

A. Yes sir, that is the number of it that was entered.

Q. And the transaction was carried through the bank books, this transaction?

A. Yes sir.

Q. Now then, Mr. Sullivan, on the 31st day of December, 1896, when the plaintiff was in the bank, in the defendant's bank and talking with you, and at the time he gave you this $1,480 note, being Ex. "1," didn't you state to the plaintiff that you would extend, or extend this loan to the plaintiff on behalf of the bank until July 1st, 1897, but that the bank for carrying it would want a sum of money over and above ten per cent. interest?

A. No sir.

Q. Didn't you at that time figure up on a piece of paper the amount due on Ex. "4" and state to the plaintiff that you would carry, make a new loan to him and carry it to July 1st, 1897, if he would pay you on behalf of the bank the amount which you marked there, which was something between twenty and forty dollars, that you marked on the paper there?

A. I would charge him?

Q. Yes sir.

A. No sir.

Q. You did not?

A. No sir.

Q. Why do you remember that?

A. Why, I have—I have a recollection of the talk with him.

36 Q. Yes; now then, you have had since that time charge of the bank, the management of the bank in person?

A. Yes, sir.

Q. How many notes have you had charge of and handled since that date, belonging to that bank?

A. Don't know.

Q. Can you state to the jury an estimate of them in number? A thousand?

A. Why, I don't really know.

Q. More than a thousand?

A. Why, I should judge there were. Just up to what date do you mean?

Q. I mean from December 31st, '96, up until the present time?

A. Yes, a thousand, probably.

Q. And during that period you have had at least a thousand

transactions with at least a thousand different men regarding these thousand different notes, Mr. Sullivan?

A. I believe so, yes.

Q. Now, you don't wish to state here that you remember distinctly each transaction of those thousand different notes with those thousand different men, do you?

A. No, sir.

Q. Letter marked Ex. "6." Did you write that Ex. "6"?

Letter shown witness and examines the same.

A. I think I did.

Q. Don't you know you did? That is your signature to it, isn't it?

A. Yes, sir.

Q. What is the amount that you state that was due there on that $1,480 note on September 18th, 1897?

Objected to as irrelevant and immaterial.

Objection overruled.

Q. What is the amount that you state is due on that note?

A. It states in the letter $1,622.

Q. $1,620?

37 A. $1,622.

Q. $1,622, yes. What note do you refer to there, Mr. Sullivan? You refer to the $1,480 note, Ex. "1"?

A. I presume so.

Q. That letter, Ex. "6," you mailed, you wrote and mailed to the plaintiff here in this action, did you not?

A. It appears so.

Q. Well, isn't it a fact that you did?

A. I don't know that I mailed it or not; I signed the letter.

Q. Well, that is directed to him, is it? Addressed to whom? Headed what?

A. Will Watt.

Q. Do you mean by that the plaintiff here?

A. Yes, this man here.

By the COURT: What is the date of the letter?

Mr. JANES: October 6th, 1897.

By the COURT: When was the payment made?

Mr. JANES: October 23rd, 1897.

Q. Letter marked Ex. "7." Look at Ex. "7."

A. What do you have reference to?

Q. Did you ever see Ex. "7" before?

A. This here?

Q. Yes, sir.

A. Probably not since I wrote it.

Q. You wrote that, did you?

A. I don't know that I did.

Q. Why do you say "not since I wrote it"?

A. Well, I presume I wrote it, but I don't know.

Q. Well, isn't it a fact that you do know that you wrote that letter, in answer to the one on it?

A. I might have instructed it to be written.

Q. You fathered the transaction then, didn't you?

A. H'm?

Q. You fathered the transaction, then, didn't you? The writing of Ex. "7;" I mean that typewritten part?

A. I presume that is mine.

Q. What papers in that Ex. "7" do you refer to when you
38 say "I have not been over to Pipestone yet and can't deliver old papers until I find everything straight"? What papers do you refer to?

A. I don't know.

Q. Don't you refer to the $1,280 note and the mortgage accompanying it?

A. I don't know that I did.

Q. Will you swear that you did not refer to them?

A. No.

Q. You will not?

A. No.

Q. Referring to Ex. "7" again, do you remember of having received that upper part of that letter, the part that is written in ink?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Then this in typewriting is in answer to that which is written in pen above there?

A. It appears to be.

Q. Isn't that the fact, that you so intended it?

A. I presume I did.

Q. You presume you did?

A. Yes.

Q. Your memory isn't very clear about this transaction and about the details of it, is it, Mr. Sullivan?

A. Not in some parts of it.

Q. Look at Ex. "8" and tell me if those figures in pencil enclosed within the pen line are your figures?

A. No, sir.

Q. What is it?

A. No, sir.

Q. They are not your figures?

A. I don't think they are.

Q. What is it?

A. I don't think they are.

Q. Will you swear they are not your figures, made by you?

A. Well I don't—I don't remember making them; they don't appear like my figures.

39 Q. Then you wouldn't say they are not your figures and you would not say they are your figures?

A. I couldn't tell that.

Q. You can't hardly swear either way. Mr. Sullivan, don't you know your signature when you see it; signature written by you?
A. Generally.
Q. Don't you always?
A. Yes; always.
Q. What is it?
A. Always, I don't know.
Q. As cashier of the bank don't you know your own signature?
A. I presume I know it.
Q. You presume you know it; you are not really certain of that?
A. I don't swear I would know it every time; might possibly not know it.
Q. And you don't know your own figures even?
A. Swear that I know my own figures?
Q. Yes?
A. No, I wouldn't swear I know my own figures always.

Witness excused.

JOHN W. WATT, sworn in his own behalf.

Direct examination by Mr. JANES:

Q. You are the plaintiff in this action, are you?
A. Yes, sir.
Q. Do you know where section 5, township 108,—the west half of section 5, township 108,—range 45 in Pipestone county is?
A. Yes, sir.
Q. Did you buy that land in 1896, or '95?
A. I think that is the year.
Q. Who did you get it from?
A. From my father.
Q. From your father?
A. Yes.
Q. What is your father's name?
A. Wilson Watt.
Q. Did he give you a deed at the time you bought it?
A. Yes, sir.
Q. Have you that deed?
A. Yes, sir.
Q. Produce it.

Witness produces deed.

Q. Marked Ex. "9." Is Ex. "9" the deed that you refer to as having received from your father?
A. Yes, sir.

Mr. JANES: We offer this deed in evidence.
Objected to on the ground that it is irrelevant and immaterial.
By the COURT: For what purpose?
Mr. JANES: For the purpose that it contains the allegation that the plaintiff in this action, the grantee in the deed, agrees to and

assumes to pay the indebtedness to the First national bank, secured on this land.

Objection overruled.

Q. Now, this deed contains this clause, "that it is free from all incumbrances except mortgages amounting to about thirty-three hundred dollars which the second party"—is the plaintiff; the plaintiff in this action is the second party. What mortgages does that refer to, Mr. Watt? "Second party assumes to pay"?

A. The twenty-five-hundred-dollar mortgage given by father to the Colonial and United States Mortgage Company and one $1,280 loan given to the Bank of Lake Benton.

Q. Given to the First National Bank of Lake Benton?

A. Yes.

Q. Now, this deed, I notice, bears date the 21st of November, '95; did you subsequent to that time notify in any manner the First National Bank of Lake Benton that you was the owner of the land described in this deed and included in it the $1,280 mortgage?

A. Yes, sir.

Q. With whom did you have any conversation regarding this matter, Mr. Watt?

A. Mr. Sullivan.

Q. This gentleman?

A. Yes, sir.

Q. When was that and where?

A. It was at the bank at Lake Benton, but I can't tell the date exactly.

41 Q. Was it before December 31st, '96, or on that date?

A. — think it was before that date.

Q. What talk, if any, did you have with Mr. Sullivan regarding that $1,280 note and mortgage?

A. Why, I wanted him to carry it over and me give my note in place of father's.

Q. In the place of the $1,280 note?

A. Yes sir.

Q. What did he say?

A. Well, he said first he could not and then he said he would, providing—I don't remember just the exact words.

Q. Well, when are you referring to the conversation, the date that you gave the $1,480 note?

A. Well, I can't tell whether that was the exact date or not.

Q. Did Mr. Sullivan say anything to you at that time about wanting additional security, or you give additional security to the bank other than the real-estate security?

A. Yes sir.

Q. What did you tell him, if anything?

Objected to as irrelevant and immaterial, as to additional security.

By the COURT: What is the purpose?

Mr. JANES: Well, perhaps it isn't very material. If it please the court, it is a part of this transaction and I presume it is admissable for that reason: We have a right to show what the transaction was;

usurious transactions are not usually put in writing and no publicity put to them, if possible.

Objection sustained.

Q. Now then, you remember of giving the defendant here Ex. "I"?

A. Yes sir.

Q. I notice the date is December 31st, '96?

A. Yes sir.

Q. Now, what did you give that to them, to the First national bank for?

42 A. Why, that paid the $1,280 note and mortgage, the one given by my father.

Q. Referred to as Ex. "4" here?

A. Yes sir.

Q. With whom did you do this business?

A. Mr. Sullivan.

Q. This gentleman here?

A. Yes sir.

Q. Was he the man that appeared to be in charge of the bank there?

A. Yes sir.

Q. Where was it?

A. Why, here in Lake Benton.

Q. What conversation did you have with Mr. Sullivan regarding the giving of this $1,480 note in lieu of the $1,280 note? State it as nearly as you can?

A. Why, he figured up the bonus on the note that I was to give and I said that I didn't want to give it and he said he would have to foreclose and finally I did give him the $1,480 note.

Q. He figured the bonus, you say?

A. Yes sir.

Q. Do you remember how much the bonus was that was figured in?

A. No sir, not the exact amount.

Q. Well, about how much was it, as nearly as you can remember?

A. Well, somewhere between twenty and thirty—thirty-five dollars.

Q. Between twenty and thirty-five dollars?

A. Yes sir.

Q. Now, what was the exact transaction, as to how he did this or what he said at the time?

A. Why, I wanted the note at ten per cent. and he said he wasn't loaning money that way and I gave him—he figured out—didn't figure out the exact per cent., he figured out on a piece of paper and he said he would have to have so much.

Q. In addition to the ten per cent., did he say?

A. Yes sir.

43 Q. Did he say to you the number of dollars he wanted in addition to the ten per cent., or did he point to it, to some figures on a piece of paper?

A. He pointed to some figures on a piece of paper.

Q. And that amount was included in the $1,480 note?
A. Yes sir.
Q. Now then, did you ever pay the $1,480 note?
A. Yes sir.
Q. When?
A. October 23rd, 1897.
Q. To whom did you pay it?
A. Mr. Sullivan.
Q. This gentleman here?
A. Yes sir.
Q. How much did you pay him?
A. $1,603.20.
Q. $1,603.20; did he give you then Ex. "1," the $1,480 note?
A. Yes sir.
Q. Did he put this stamp upon it at that time?
A. Yes sir.
Q. Now, when you gave Mr. Sullivan, or the First national bank this Ex. "1," did you give any mortgage securing it?
A. Yes sir.
Q. I would ask you to look at Ex. "2" and "3" and state if these are the mortgages that you at that time signed and executed and gave to Mr. Sullivan securing that $1,480 note?

Objected to as irrelevant and immaterial.
By the COURT: Let him answer that by yes or no; it certainly doesn't prejudice anybody.

Q. Just yes or no.
A. Yes sir.
Q. What, if anything, did Mr. Sullivan say to you regarding the satisfaction of the $1,280 note and mortgage?

Objected to as irrelevant and immaterial.
Overruled.

Q. Read the question.

Question read.

44 A. I called for the twelve hundred——
Q. No; at the time you gave the $1,480 note, on December 31st, what did Mr. Sullivan say to you about giving up or satisfying this $1,280 note and mortgage?
A. He said he would give it up as soon as he had been to Pipestone and seen that everything was all right and get the other recorded.
Q. Then I understand you gave this $1,480 note in lieu of the $1,280 note?
A. Yes sir.
Q. Now, at the time he figured up that bonus of twenty to thirty-five dollars, did you know that it was put into the $1,480 note?
A. Yes sir.
Q. Did you at that time agree to pay it to the bank as a part of the transaction?

A. Yes sir.
Q. And did you pay it?
A. Yes sir.
Q. On October 23rd, '97; and who did you say you paid it to? Mr. Sullivan?
A. Mr. Sullivan.
Q. Now then, after you gave the $1,480 note, did you have any talk with Mr. Sullivan about its payment and the amount there was due thereon, etc.? I am speaking now about the $1,480 note?
A. What was the question, please?
Q. Read the question.

Question read.

A. Yes sir.
Q. I will show you Ex. "6;" did you ever see that before?
A. Yes sir.
Q. Where did you—how did you get that?
A. Sent to me by Mr. Sullivan.
Q. Where did you receive it? Where?
A. In Ruthton.
Q. Where in Ruthton?
A. Post-office.
Q. Directed to you, was it?
A. Yes sir.
45 Q. In an envelope?
A. Yes, sir.
Q. And have you had a talk a short time before that regarding this $1,480 note?
A. I think I had; yes.
Q. What was the amount he stated to you at that time was due on that $1,480 note?
A. It was over $1,620; I can't state exactly now how much it was.
Q. I will show you Ex. "7;" did you ever see that before?
A. Yes sir.
Q. Is that that is written in ink and pen, is that in your handwriting?
A. Yes sir.
Q. What did you do with it after you had written it?
A. Mailed it to the bank—First national bank.
Q. Of Lake Benton, here?
A. Yes sir.
Q. What do you refer to there in that letter?
A. Referred to the $1,280 note and mortgage.
Q. Referred to the $1,280 note and mortgage?
A. Yes sir.
Q. Did you receive this again, Ex. "7?"
A. Yes sir.
Q. How did you receive it?
A. Received it the same as the other, in the post-office.
Q. In the post-office?
A. Yes.

Q. At about the date it bears?
A. Yes sir.

Mr. JANES: We offer Ex. "7" in evidence and Ex. "6" in evidence. Ex. "6," make the offer only.

Objected to on the ground that it is incompetent, irrelevant and immaterial.

Objection overruled.

Mr. JANES: We offer Ex. "7" in evidence.

Mr. McKENZIE: Same objection to No. 7.

Objection overruled.

46 Mr. JANES: I will read both exhibits to the jury.

Q. What does that mean, "Mr. Creglow;" what does that mean?
A. He is the man I sold the land to.
By the COURT: He is what?
A. He is the man I sold the land to.
Q. The purchaser of the farm?
A. Yes sir.
Q. Now, Mr. Watt, when you went to pay this mortgage, this $1,480 note and mortgage, how much did Mr. Sullivan state to you was due on it?
A. Something like—over $1,620.
Q. Over $1,620?
A. Yes sir.
Q. What did you say, if anything, to him?
A. I said it wasn't right.
Q. Did he then again make any figures, or make any different estimate of the amount due on that note and mortgage.
A. No sir; he said he would have to have that.
Q. He said he would have to have that?
A. Yes.
Q. Did he figure it up at that time when you paid it? You received the paper on which these figures are?
A. He figured it up and I wanted him to give me the paper and he wouldn't give me the paper, and I told him to give me the figures and he gave me this.
Q. Is that the one he figured up the $1,620 odd dollars to be due on it?
A. This paper?
Q. Yes?
A. No sir.
Q. Did you see Mr. Sullivan make those figures there inclosed within the circle of ink there?
A. Yes sir.
Q. What do they refer to?
A. What he wanted for the note; what he was willing to take for the $1,480 note.

Mr. JANES: We will offer that in evidence, just that part enclosed in the ink lines.

47 Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Exception by defendant.

Mr. McKENZIE: I would like to have an exception to the ruling on the introduction of the letters, too, your honor.

By the COURT: You can have them.

Q. Is this the amount that you paid him at that time then?

A. Yes sir.

Q. Now, Mr. Watt, regarding the amount that was figured as being due by Mr. Sullivan on this $1,280 note at the time that you gave the $1,480 note; what interest did Mr. Sullivan figure on that or tell you he was figuring on that note?

A. At the time it was due, you mean?

Q. From the time it was due, yes; November 6th, '96?

A. Ten per cent. up to the time it was due.

Q. He figured ten per cent. up to the time it was due?

A. Yes sir.

Q. Did you see the figures?

A. Yes sir.

Q. Did he tell you that it was what he was figuring?

A. No, he didn't say anything about it.

Q. Did he say anything at that time to you about your father having paid him or the bank any bonus for carrying it up until its due date?

A. Yes sir.

Objected to as irrelevant and immaterial.

By the COURT: Hardly seems to me that is proper, Mr. Janes.

Mr. JANES: I will withdraw the question, if the court please. Now, as to the rate of interest that he figured from November 1st, 1896, up until December 31st, 1896, at what rate did he figure this note?

A. He figured up to September 26th at ten per cent. and
48 I can't say the exact amount from that until December 31st, but it was more than ten per cent.

Mr. McKENZIE: What note is that?

Q. The $1,280 note. On that amount that he figured it up it was more than ten per cent.?

A. Yes sir.

Q. And that you say he figured up on this note that was due was how much less than the $1,480?

A. Between twenty and forty dollars.

By the COURT: At the time that you gave that new note, did he tell you how much was due on the old note?

A. Yes sir.

By the COURT: You remember how much he told you was due on the old note?

A. No sir, not the exact amount.

Mr. JANES: He says he don't remember exactly what it was, but it was somewhere between twenty and forty dollars. That is what he told you, is it?

A. Yes sir.

Q. Did he show you the figures at the same time, Mr. Watt?
A. Showed me the figures what was due, yes sir.

Cross-examination by Mr. McKENZIE:

Q. Mr. Watt, when you had this talk with Mr. Sullivan at the time you made the $1,480 note, you say you don't remember just what Mr. Sullivan stated the amount to be due on the $1,280 note?
A. No sir.
Q. Don't remember what he said about that, is that right?
A. I don't remember the exact words.
Q. Or the amount either?
A. No, not exactly.
Q. That he stated was due. Did he figure up, make some figures and then tell you that that was the amount due on the note and you would have to pay it?
A. He said that is what he would have to have for the settlement of the $1,280 note to carry it over.
49 Q. Would have to have that much in settlement of the $1,280 note?
A. $1,480, yes sir.
Q. If you have to pay it in cash? Was there any talk at that time about you paying the note?
A. Nothing, only I told him I couldn't pay it.
Q. Did you say something to him about paying the note at that time in cash?
A. I don't remember anything being said; unless I sold the farm, then I would pay him; if I could sell it in a certain time.
Q. Then he told you if you would give a note for $1,480, that he would, or make out this note for $1,480 to July 1st, 1897, he would take it in lieu of this $1,280 note, did he?
A. Yes sir.
Q. Now then, when he figured up the amount due on the $1,280 note, didn't he tell you there was $1,480 due on the note?
A. No sir.
Q. He did not?
A. No sir.
Q. You are positive of that?
A. Yes sir.
Q. And didn't he tell you it would take $1,480 to pay up that note, the $1,280 note?
A. I don't remember of him saying that.
Q. You don't remember?
A. No.
Mr. JANES: You say he didn't tell you that there was $1,480 due on that $1,280 note?
A. No sir.
Mr. JANES: If he had told you so you would have remembered it, would you?
A. Yes sir, I would.

Q. Well, didn't he show you the figures then, $1,480, and tell you that was the amount that it would take to settle the $1,280 note?

A. I don't remember that he showed me some figures at
50 that time; but he said it would take that to settle; he said he would have to have a note for that much.

Q. He said he would have to have a note for that much to settle the note of $1,280?

A. Yes sir.

Redirect examination by Mr. JANES:

Q. Didn't he say at the same time "to settle it and carry it until July 1st, 1897?"

A. He would have to have that to carry.

Q. $1,480 to carry it?

A. Yes sir.

Q. He didn't claim to you that there was $1,480 due on that $1,280 note on December 31st, 1896, did he?

A. No sir.

Witness excused.

Mr. JANES: We offer as part of this case the three mortgages, two real-estate mortgages and one chattel mortgage, being Ex. "2," "3," and "5." Those are the ones that were identified and marked as exhibits. The one marked Ex. "5" is the one that secures the $1,280 note and the other two are the ones that secure the $1,480 note.

Objected to on the ground that they are incompetent, irrelevant and immaterial.

Objection sustained.

Exception by plaintiff.

Plaintiff rests.

Mr. McKenzie opens the case to the jury.

J. B. SULLIVAN, recalled for the defendant.

Direct examination by Mr. MCKENZIE:

Q. Mr. Sullivan, I believe you have stated that you are the cashier of the First National Bank of Lake Benton?

A. Yes sir.

51 Q. And were at the time the $1,480 note, introduced in evidence, was taken?

A. Just give the date.

Q. That was December 1st, 1896?

A. No, I don't believe I was in '96, December 31st.

Q. That is Ex. "1," just look at that?

A. I don't think I was cashier at that time; I was merely assistant.

Q. Well, do you remember seeing the plaintiff in the First National Bank of Lake Benton on or about December 31st, 1896?

A. Yes, on or about that date.

Q. And Ex. "1" is in your handwriting?
A. I think it is, yes.
Q. Now, the transaction with reference to that $1,480 note, was that had between you and Mr. Watt?
A. Was the conversation between——
Q. The conversation and transaction?
A. I think it was.
Q. Now, if you remember that conversation, what Mr. Watt said to you when he came there that day?
A. No, I can't tell you the whole conversation.
Q. You can't tell the whole conversation?
A. No.
Q. Well, do you remember what he said about his old note, the note of $1,280, what he wanted to do with that?
A. Well, part of the conversation and——
Q. Just as near as you remember it, tell it.
A. He stated during the conversation that he had bought the place from his father and we had a talk about him paying the debt up in full——
Q. Yes.
A. And I think we talked about—I don't know whether it was that time or not, now—it seems to me—I think it was the same time, he talked about hiring the money at Pipestone——
Q. Well——
52 A. And he said that he was figuring on selling the farm, I think, or part of the farm, and couldn't do it just then, but he said he thought he had a prospective customer who would come around some time, and he wanted to fix the matter up; these matters, so that he would be in condition to sell his farm and pay us up.
By the COURT: That was on the 31st day of December this conversation occurred?
A. The date of the note; the date of the first transaction between Mr. Watt and I.
By the COURT: Was that the date the note of $1,480 was given?
A. Yes, sir.
Q. Did you at that time figure up the amount due on the $1,280 note, Ex. "4?"
A. That is the Wilson Watt note?
Q. Wilson Watt to the First national bank?
A. I think I did.
Q. And did you tell him what was due on it at that time?
A. As near as I can—state or remember, he asked me what amount—what amount was due; I think he asked me what amount was due on his father's claim; or what amount he would have to pay to settle his father's claim, and I told him the amount.
Q. You computed it for him, did you?
A. I told him the amount.
Q. What amount did you tell him at that time?
A. The amount I told him was the amount of the new note.
Q. Yes; $1,480?

A. If that is the amount it is——

Q. Shown note.

A. Yes; whatever the new note was; I told him that was the amount necessary for him to give a note for in order to pay up the old claim; or settle the old claim; that was about the words I used, "to settle the old claim."

53 Q. When you took this $1,480 note from Mr. Watt, the plaintiff in this action, did you tell him that the amount due on the $1,280 note was less than $1,480?

A. No sir.

Q. Any less than that?

A. No sir; he didn't say anything about it.

Q. Just simply computed the amount due on this $1,280?

A. He wanted me to figure up—he said he had bought the farm and agreed to take up those notes of his father; he had all the business in his own name and said the business would be done with him hereafter, and wanted me to figure up the amount that was due and he would have to give me a new note or a note for the amount due some time hence; he wanted time enough to sell his land and he fixed the date, whatever the due date is there. I figured up the amount and made out a new note for it.

Q. Now then, the excess of ten per cent. on the $1,280; that is, the excess of it over and above ten per cent. on the $1,280 and up to the time it was paid, to whom was that charged?

Mr. JANES: Do you assume there was——

Q. I say there is a $1,280 note; now, when the new note was given and the amount was figured up and the $1,480 note was given, the amount due on the $1,280 was figured up; now then, how did you arrive at the $1,480?

A. In what do you mean?

Q. In figuring the $1,280 note; how did you compute it to be $1,480?

A. I figured up the note until the time it was due and I figured interest from then until the time I made out the new note.

Q. Now then, is that practically all the conversation that was had between you and J. W. Watt, or the plaintiff?

A. Why, I don't remember; that was about the——

Q. Was there anything said about bonus; he paying any bonus?

A. No sir; I didn't tell him I would charge him any bonus at all.

54 Mr. JANES: I ask that the answer be stricken out as not responsive to the question.

By the COURT: So ordered. You may answer the question.

Question read.

By the COURT: Answer yes or no.

A. No.

Q. Nothing said?

A. No.

Q. Did you charge him any bonus in making this note of $1,480?

A. I made no charge of bonus.

Q. Or interest over and above the legal rate of interest?

Mr. JANES: Let the witness state what he did; object to the question as being leading.

By the COURT: I don't think that is proper; let him state what he did or what he said.

Q. You remember any more of the conversation had between you and him relative to the amount due on this note?

A. Why, I don't——

Q. Due on the $1,280 note?

By the COURT: Simply answer yes or no, Mr. ——. He simply asks you if you remember any other conversation.

A. I can't recollect just now without my mind being called to it or something of that kind.

Q. That was practically all the conversation that was had between you and the plaintiff at the time of making this new note for $1,480?

A. Yes, practically; as far as I can remember now. I know we talked a little some about his selling the place.

Q. As to the amount due, did you tell him it would take $1,480 to pay his father's claim and carry the claim till November—or July 1st, 1897?

A. No sir.

Q. You did not?

A. No sir; I told him——

55 Q. Did you tell him that you were charging him a bonus of twenty to thirty or forty dollars?

A. No sir.

Q. Eh?

A. No sir.

Cross-examination by Mr. JANES:

Q. You are a kind of a philanthropist?

A. Not that I know of.

Q. You haven't discovered that fact yet?

A. I have.

Q. You have? What is that?

A. I have.

By the COURT: What was that question, Mr. Janes?

Mr. JANES: I asked him whether he was a philanthropist and he said he was not. Will you figure up the interest on this $1,280 note according to its terms from its date to December 31st, 1896, at ten per cent., and tell this jury how much that amounts to? Will you?

A. Why, I don't see any object in it.

Q. I just asked you, yes or no; you can answer that question?

A. No.

Q. You don't know how to figure interest at ten per cent., do you?

A. I think I do.

Q. You simply refuse to figure up this interest, do you, at ten per

cent. on this note and tell this jury how much was due on December 31st, 1896, on this $1,280 note at ten per cent.? That is what you wish us to understand?

A. On the $1,280 note?

Q. Yes.

A. I don't see that it is necessary.

Q. Well, you refuse to do it then, do you?

A. Yes.

Q. Now, don't you know, Mr. Sullivan, that in computing
56 that note, the $1,280 note, that you charged more than ten per cent. interest on that note at the time he gave you the $1,480 note?

A. Will Watt, $1,280——

Q. $1,480 note?

A. That I charged more than ten per cent.?

Q. On the $1,280 note; don't you know that that was a fact?

A. I think I did charge more than ten per cent. on the $1,280 note.

Q. You think you did charge more than ten per cent. on the $1,280 note?

A. Yes sir.

Q. Now, why did you agree to give up this note with a bonus?

A. What was that?

Q. Why did you agree to give up this $1,280 note that you had figured at a greater rate than ten per cent. and take a new note drawing simply ten per cent. without a bonus?

A. In hopes of getting our money.

Q. For the purpose of helping the plaintiff here?

A. No sir, helping ourselves.

Q. You then wanted to purge this $1,280 note of usury by taking this $1,480 note?

A. No sir, that wasn't the purpose.

Q. What is it?

A. No sir.

Q. Wasn't it for the purpose of bringing about what is called a "cut-off"?

A. No sir.

Q. You did that then out of the purest motives, did you, Mr. Sullivan?

A. I did that for the accommodation of Mr. Watt, Jr.

Q. And for the purpose of covering the matter and assisting him until he could dispose of his place, that was the idea, was it?

A. How is that?

57 Q. For the purpose of assisting him until he could dispose of his farm and pay you; that was it?

A. Yes.

Q. Now then, you didn't say anything to him about a bonus, did you?

A. I didn't tell him I would charge him a bonus.

Q. No, you didn't tell him you would charge him a bonus?

A. No sir.

Q. Why did you tell him—why did you use this cautious language that you did use in answer to Mr. McKenzie's question when you answered him saying "that you told him that was the amount—that this $1,480 was the amount necessary to settle the old claim?" Why did you use the word "necessary?" You didn't say that that was the amount due on that old note?

A. I don't think I said so.

Q. What say?

A. I don't remember just what I said.

Q. Do you mean to say you didn't use the expression "that that was the amount necessary to settle the old claim?"

A. I don't deny it.

Q. You don't mean to say then that that was the amount due, but it was "the amount necessary to settle it?"

A. That was the amount we demanded.

Q. The amount you demanded, yes; you have talked over this matter of your giving your testimony with your attorney here, Mr. McKenzie?

A. I don't think we mentioned it.

Q. Never talked the case over since it arose?

A. Talked the case over, never talked about my testimony though.

Q. Didn't Mr. McKenzie tell you in any of those conversations that charging a bonus for the past use of money wasn't usury?

A. No sir.

Q. You understood that to be the law?

A. Why, I don't know.

58 Q. You understood that an overcharge of more than ten per cent. for the past use of money was not usury under our laws, didn't you so understand it? Just answer the question?

A. Ask the question once more.

Q. Read the question.

Question read.

A. Can I ask a question?

Q. No, you answer mine.

A. I want to ask you a question.

Q. Well, I want to go on the witness stand in a few minutes if you desire to ask me a legal opinion.

A. I can hardly answer the question and express myself by yes or no.

By the COURT: Read the question.

Question read.

By the COURT: I don't see any difficulty in answering that question.

A. My idea would be—my understanding——

Q. Just yes or no.

A. I am not prepared to answer by yes or no. But I would like to state my reason.

Q. Well, state the reason; let's have it?

A. You say for the past use of money; a note may as well be in my possession.

Q. Well, we will drop that question out. Just answer the question now, if you understand it; you can answer by yes or no.

A. Well, I don't want to make a statement here that I am not sure of.

Q. Well, we will pass it along if you can't answer; you can say "no," if that is true?

A. I don't wan't to say "no" either.

Q. Well, we will simply dodge it, then. Now, Mr. Sullivan, do you remember the conversation that you had with the parties that you were doing business with the next week after December 31st, 1896, all of them?

A. No sir.

59 Q. No; you didn't charge your memory with what you said or what the other fellow said regarding the business transactions and regarding the notes in that bank?

A. Some of them I did.

Q. Did you specially charge your mind with this?

A. It is a very large amount.

Q. You didn't make any memorandum of this conversation so you can refresh your memory?

A. No, sir.

Q. Now, why did you write Mr. Watt that letter that is in evidence here, that there was $1,622 due on that $1,480 note?

Mr. McKENZIE: I think that is incompetent, irrelevant and immaterial.

By the COURT: I believe I will allow that on cross-examination.

Exception by defendant.

A. For the purpose of getting the money.

Q. Why did you add on that nineteen or twenty dollars more than there was due on that note, in that letter?

A. I don't remember the real cause.

Q. What is it?

A. I don't remember the real cause.

Q. Of, you don't remember the cause. Was that one of your philanthropic moves for the purpose of assisting this plaintiff in selling his farm?

A. I don't think it was.

Q. It wasn't one of your philanthropic measures then?

A. No, hardly.

Q. Now, as a matter of fact, Mr. Sullivan, you don't remember the conversation, just what took place at that talk with Mr. Watt at the time he gave you the $1,480 note, do you?

A. Just as I stated.

Q. You don't remember just what you said, do you?

A. Not exactly every word.

Q. You don't remember what he said?

60 A. Just the general run of the conversation, that is all.

Q. You don't remember all you said? Every word you said, just answer yes, or no.

A. Every word?
Q. Yes, sir.
A. No.
Q. Nor you don't remember every word he said either, do you?
A. No, sir.
Q. What is it?
A. No, sir.
By the COURT: Mr. Sullivan, do you know how much was due on that $1,280 note on the 31st day of December, 1896?
A. I know from the records what we charged him.
By the COURT: Well, do you know how much was really due?
A. According to the note?
By the COURT: Yes.
A. I don't remember the exact figures, Judge.

Redirect examination by Mr. MCKENZIE:

Q. I understand, Mr. Sullivan, the amount charged, or for which the new note was given was charged against the $1,280 note; that is, you figured it up and computed the $1,280 note to be $1,480?
A. That is what I figured it at.

Mr. JANES: I ask that that answer be stricken out until the question is disposed of.
By the COURT: So ordered.
Mr. JANES: Object to the question on the ground that it is leading and not redirect, and asks for an opinion or conclusion of the witness.
Objection sustained.

Q. In figuring up this $1,280 note, Mr. Sullivan, you remember at what rate you figured it?
61 A. I don't remember the rate.
Q. Well, you remember whether you charged the makers of those notes more than ten per cent.?
A. Makers of the $1,280 note?
Q. Yes.
A. I think I did.
Q. At that rate, whatever it was that you charged them made it $1,480?

Objected to as leading, not redirect examination and asks for a conclusion or opinion of the witness.

By the COURT: Did you testify that you didn't know the rate at which you figured it?
A. I testified that I didn't know the exact rate.
By the COURT: Why did you figure it any different than the rate specified in the note?
A. Well, I think we were charging Mr. Wilson Watt more than ten per cent.
By the COURT: More than the rate specified in the note?
A. Yes.

Mr. JANES: Wasn't it the usual custom in all of your loans at that time to charge the borrower more than ten per cent. at that bank?

Objected to as irrelevant and immaterial.

Objection sustained.

Mr. JANES: I don't care to take any exception.

Witness excused.

Recess taken to Thursday, October 20th, 1898, at 9.00 o'clock a. m.

J. B. SULLIVAN, recalled for the defendant.

Direct examination by Mr. MCKENZIE:

Q. What interest, Mr. Sullivan, have you in the First national bank?

A. None.

Mr. JANES: Objected to as immaterial and ask that the answer be stricken out.

62 Mr. MCKENZIE: The weight of a witness' testimony depends upon his interest in the case, your honor. I just simply want to show how he is connected with the bank.

By the COURT: My impression is it is admissible for that purpose.

Objection overruled.

Exception by plaintiff.

A. None.

Q. You have no interest in the bank?

A. No sir.

Q. No stock?

A. No sir.

Q. Now, Mr. Sullivan, just state to the jury your reason for not putting any usuary in this loan or note to the plaintiff.

Objected to as calling for a conclusion of the witness.

Objection sustained.

Exception by defendant.

Q. In making this new loan or new note with the plaintiff, what rate of interest did you charge on the money loaned?

Mr. JANES: That has all been gone over with.

By the COURT: It appears in the note and the note has been introduced in evidence.

Cross-examination by Mr. JANES:

Q. Mr. Sullivan, I call your attention to Ex. "8;" in figuring the interest on the $1,480 note at the time that the plaintiff paid you $1,603.20, the $74 item and the $49.20, were the interest that you charged on the note, were they not and it was paid to you?

A. I don't know; I know I figured up ten per cent. and he paid it.

Q. And he paid you $1,603.20?

A. I don't know as that is the exact amount.
Q. You so testified yesterday?
A. I presume that was the amount of it at that time at ten per cent.
63 Q. I think you admitted that those are your figures?
A. No, I didn't admit—I don't know whether they are or not.
By the COURT: When was that payment?
Mr. JANES: October 23rd, 1897. Well, then, all over $1,480 that the plaintiff did pay to you on account of that note was for interest, was it not, Mr. Sullivan?
A. I think so.

Witness excused.
Defendant rests.
Plaintiff rests.

Mr. McKenzie sums up the *the* case to the jury for the defendant.
Mr. Janes sums up the case to the jury for the plaintiff.
(During the summing up of Mr. Janes, Mr. McKenzie desires to except to the remark of counsel, stating that the cashier of a national bank must be a holder of five shares of stock in the bank or else he isn't a legal cashier of the bank.)

Charge.

GENTLEMEN OF THE JURY: The statutes of this State provide that no person, company, or corporation, shall directly or indirectly take or receive any money, goods or things in action, or in any other way, any greater sum or any greater value for the loan or forbearance of money than ten dollars on one hundred dollars for one year; and the statutes of the United States provide that in case a greater rate of interest than that allowed by the State law has been paid to any national bank, the person by whom it has been paid may recover back in an action in the nature of an action of debt twice the amount of interest thus paid from the association thus taking or receiving the same.
64 It is admitted by the parties to this action that the defendant—by the parties in their evidence, that the defendant bank held a note against Wilson Watt, the father of the plaintiff, date-September 26, 1895, for $1,280, bearing interest at the rate of ten per cent. per annum. The note has been introduced in evidence and marked Ex. "4," and you will have it for inspection; and it is proved without contradiction that the plaintiff had assumed the payment of this note and that on the 31st day of December, 1896, he went to the defendant bank for the purpose of procuring an extension of the time for the payment of the money due on this note, and that he then and there executed another note, dated December 31st, 1896, for the sum of $1,480, also bearing interest at the rate of ten per cent. per annum, and due July 1st, 1897. This note has been

introduced in evidence and marked Ex. "1," and you will have it for inspection.

The plaintiff claims, and it is admitted, that this note was given in lieu of the former note against Wilson Watt, for the purpose of having an extension of time to pay the same, and it is claimed by the plaintiff that there was added to the face of the last note, Ex. "1," a sum of from twenty to thirty-five dollars by the defendant in excess of said ten per cent. in payment of this loan or forbearance, and this action is brought under the United States statute to recover of the defendant twice the amount of interest thus paid.

The cashier of the defendant, as I understand his evidence, admits that there was included in the last note, Ex. "1," a greater sum than was due on the former note, Ex. "4," but he claims that this was not for the loan or forbearance of the money to the plaintiff, but it was merely an overcharge or overdemand on the amount due on the former note of Wilson Watt, and that it had no reference to the loan or forbearance to the plaintiff.

It is for the jury to determine what the evidence was and what the facts are; and if the jury find from the evidence that the
65 excessive amount, if any, included in the note of the plaintiff, Ex. "1," was merely an overcharge or demand on the amount due on the note of Wilson Watt, and that it was included in the note of the plaintiff for the loan or forbearance of money to him, while the plaintiff might, perhaps recover in a proper action the excessive amount so paid, he cannot recover in this action, as this action is based exclusively on the charge of usury; but if the jury find from the evidence that any amount included in plaintiff's note, Ex. "1," in excess of ten per cent. was knowingly included by the defendant for the loan or forbearance of the money to the plaintiff, then the plaintiff is entitled to recover of the defendant twice the amount of the interest thus paid by the plaintiff.

It is proved without contradiction that on the 23rd day of October, 1897, the plaintiff paid to the defendant $1,603.20, the full amount due on his note, Ex. "1," and if the plaintiff recover, he is entitled to recover twice the amount of interest included in this amount so paid.

As the plaintiff charges that the defendant has taken usurious interest, the burden of proof is upon him to prove this allegation by a preponderance of evidence, and if the jury find the evidence evenly balanced or that it preponderates in favor of the defendant upon this issue, then it is the duty of the jury to determine this issue in favor of the defendant, and return a verdict of no cause of action.

You, gentlemen of the jury, are the exclusive judges of all questions of fact and of the credibility of each and every witness who has testified on the trial. It is the duty of the jury to carefully and impartially weigh and consider all the evidence and all the facts and circumstances proved on the trial, and to return a verdict in accordance with the facts as you shall find them and with the law as given you by the court.

The defendant has requested me to give you some instructions,

a portion of which I give you. Number 1 refused. Number 2 refused. Number 3 given.

66 3. A contract or agreement to pay a compensation for the past use of money is not a contract to pay interest.

Number 4 given.

4. Therefore, if you find that the plaintiff gave the defendant a note for $1,480 in payment of the $1,280 note and interest and also in compensation of the past use of money represented by said $1,280 note, then you will find for the defendant, no cause of action.

The court reads the forms of verdict to the jury.

Exceptions are in order.

Mr. McKENZIE: I desire an exception to that part of the main charge which instructs the jury that the plaintiff is entitled to recover double the amount of interest thus paid.

Defendant also excepts to the refusal of the court to give its first request, which is as follows:

1. The limit of recovery in a suit for a penalty against a national bank, under the laws of the United States, where unlawful interest has been actually paid to and received by it, is twice the amount of the interest paid in excess of the legal rate, and not twice the amount of the entire interest.

Defendant also excepts to the refusal of the court to give its second request, which is as follows:

2. In the above case, if you find from the evidence that on December 31st, 1896, plaintiff and defendant entered into an agreement whereby plaintiff agreed to pay and defendant to receive a greater rate of interest for money then loaned plaintiff than ten per cent. per annum, and that in pursuance thereof the $1,480 note introduced in evidence was made by plaintiff and received by defendant, and that in pursuance of said agreement plaintiff actually paid to defendant on or about October 23rd, 1897, a greater rate of interest on the money loaned him than ten per cent. per annum, then your verdict will be in favor of plaintiff for twice the amount of interest paid by him to defendant in excess of said ten per cent. and no more.

67 Mr. JANES: I have no exceptions to the charge.

Bailiff sworn in and jury retires in charge of bailiff.

At 5.30 p. m. jury comes in stating they had not agreed on a verdict but desiring to have the court read its charge again.

The court then gives the jury its former charge and jury is ordered to retire again in charge of bailiff.

Mr. McKENZIE: I desire to have the same exceptions notes as before.

October 21st, 1898, at 9.00 a. m. jury brings in a sealed verdict as follows:

Verdict.

STATE OF MINNESOTA, }
County of Lincoln. }

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

We, the jury in the above-entitled action, find a verdict in favor of the plaintiff, and assess his damages at the sum of $321.94.
Dated at Lake Benton, this 20th day of October, A. D. 1898.

C. H. SPEIGHT, *Foreman.*

By the COURT: Gentlemen, the foreman signs his name considerably different from how it appears in the jury list. You may come and see it, Mr. Janes, if you would like to.

Mr. JANES: If a statement was made in the record showing that the Charles Spates on the jury list is the same man as the one who signs it here as foreman of the jury, I think under the direction of the court making such record, it is sufficient.

68 By the COURT: Mr. Foreman, are you the same person who is named in the jury list as Charles Spates, spelled S-p-a-t-e-s?

Mr. FOREMAN: Yes sir, I was summoned.

Mr. MCKENZIE: It is stipulated that a stay of proceedings be granted by consent of parties for forty days, except for such proceedings as may be necessary for a settlement of a case and motion for a new trial.

STATE OF MINNESOTA, }
County of Brown. }

I hereby certify that the foregoing is a true and correct transcript of all the evidence given and all the proceedings had upon the trial of the above-entitled action, and of the whole thereof, to the best of my knowledge and ability.
Dated, New Ulm, Minn., October 27th, 1898.

W. T. ECKSTEIN, *Reporter.*

The above and foregoing having been examined and found conformable to the truth and to contain all the evidence given on the trial of the action, the same together with the exhibits therein referred to and the pleadings to be thereto attached is duly allowed and signed as the settled case containing exceptions.
Dated Nov. 25th, 1898.

B. F. WEBBER,
Judge of the District Court, Ninth Judicial District.

Order Denying Motion for New Trial.

The above-entitled action was duly tried before the court and a jury, at a general term of said court, on the *the* 19th day of October, 1898. On the 20th day of October, 1898, the jury duly re-
69 turned a verdict in favor of the plaintiff for the sum of $321.94; and the defendant now moves for a new trial upon the following grounds, to wit:

First. That the verdict is not justified by the evidence.

Second. That the verdict is contrary to law.

Third. Error in law occurring at the trial and excepted to by the defendant.

The action was brought under sec. 5198 Revised Statutes of the United States to recover twice the amount of interest paid by the plaintiff to the defendant upon a promissory note alleged to have been usurious.

The alleged errors complained of by the defendant are the admission of the letter (Ex. 6) written by the cashier of the defendant to the plaintiff, in which he demanded the sum of $1,622 alleged to be due upon the note in suit; the cross-examination of the defendant's cashier as to why he wrote the letter; the exclusion of the evidence of the cashier as to his reason for not putting any usury in the loan; the charge of the court that if the plaintiff had paid usury he was entitled to recover twice the amount of interest paid and the refusal of the court to instruct the jury that the plaintiff was entitled to recover only twice the excess of the legal rate. In my opinion the rulings and charge complained of were correct. It was incumbent upon the plaintiff to prove that the defendant had knowingly taken a greater amount of interest than is allowed by law and, for this purpose, it was competent for the plaintiff to prove that the defendant had demanded a greater amount than is allowed by law and its reason for making this demand. The fact that the cashier demanded a greater amount than was due on the note does not render the letter containing the demand inadmissable, and if the defendant was prejudiced before the jury by the making of this excessive demand, it was the fault of its own cashier. The question of the
70 defendant's attorney to its cashier as to his reason for not putting any usury in this loan or note is not a question as to any transaction between the parties, but is equivalent to asking the cashier what was in his mind at the time, or his reason for not doing an unlawful act. I am unable to see how the answer to this question could have any possible bearing on the case and, in my opinion, it could have been properly excluded if no objection had been interposed. If for any reason the answer would have been material, the defendant should have made an offer of what he intended to prove so that the court could have seen that the testimony would have been material. Austin *vs.* Robertson, 25 Minn. 431; Norris *vs.* Clark, 33 Minn. 476; Conlan *vs.* Grace, 36 Minn. 276.

There is some conflict in the authorities as to whether a person

who has paid usurious interest is entitled to recover twice the entire amount of interest paid or only twice the amount of excessive interest, but, in my opinion, the weight of authority sustains the position of the plaintiff that he is entitled to recover twice the entire amount of interest paid. 16 Am. & Eng. Ency. of Law, 176; Crocker *vs.* First Nat. Bank of Chetopa, 1 Nat. Bank Cases, 317; Nat. Bank of Madison *vs.* Davis, 1 Nat. Bank Cases, 350; Lebanon Nat. Bank *vs.* Karmany, 3 Nat. Bank Cases, 746; Schuyler Nat. Bank *vs.* Bollong, 40 N. W. Rep. 413; Hill *vs.* Bank, 15 Fed. Rep. 432; Louisville Trust Co. *vs.* Kentucky Nat. Bank, 87 Fed. Rep. 143.

Ordered, that the motion of the defendant for a new trial be and the same is hereby denied.

Dated December 23, 1898.

B. F. WEBBER,
Judge of District Court. Ninth Judicirl District.

71 STATE OF MINNESOTA, }
County of Lincoln, } *ss:*

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

To F. L. Janes, Esq., attorney for the above-named plaintiff, and to John Johnson, clerk of said district court:

Please take notice, that the above-named defendant appeals to the supreme court of the State of Minnesota, from an order of the said district court entered herein, on the 24th day of December, A. D. 1898, denying defendant's motion for a new trial of said action, and from the whole thereof.

Dated this 28th day of December, A. D. 1898.

JOHN McKENZIE,
Attorney for Defendant.

72 STATE OF MINNESOTA:

Supreme Court.

Mandate.

The State of Minnesota to the honorable judges and officers of the district court of the ninth judicial district, sitting within and for the county of Lincoln, Greeting:

Whereas, lately in your court in an action therein pending, wherein John W. Watt was plaintiff, and The First National Bank of Lake Benton, Minnesota, was defendant, a certain order was entered therein December 24th, 1898, from which order said defendant appealed to this court;

And whereas, the same was duly argued, heard and submitted at the general April term, A. D. 1899, of our supreme court, after mature deliberation thereupon had, our supreme court did adjudge,

determine, decree and order "that the order of the court below herein appealed from be, and the same hereby is in all things affirmed, and that the respondent, plaintiff, above named, have judgment accordingly." A copy of the entry of judgment thereupon in this court is herewith transmitted and made part of this remittitur;

Now therefore, this mandate is to you directed and certified to inform you of these proceedings had in our supreme court in said hereinbefore-mentioned cause, and the same is hereby and herewith remanded to your court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness the Honorable Charles M. Start, chief justice of the supreme court aforesaid, and the seal of said court at St. Paul, this 26th day of June, A. D. 1899.

D. F. REESE,
Clerk of Supreme Court.

73 [Endorsed:] No. 1186. Supreme court State of Minnesota Mandate To the district court of Lincoln county. John W. Watt, respondent, *vs.* First National Bank of Lake Benton, Minn. appellant Filed June 30, 1898 Earnest Sigvaldson, clerk of district court, Lincoln Co., Minnesota. —— ——, attorney for —— ——.

74 STATE OF MINNESOTA, }
County of Lincoln, }

In District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Defendant.

The above action came duly on for trial before said court and a jury at Lake Benton, in said county, on the 19th day of October, 1897. F. L. Janes, attorney, appeared for the plaintiff. John McKenzie, attorney, appeared for the defendant. The case was duly submitted to a jury and on the 20th day of October, the said jury rendered a verdict in favor of the plaintiff and against the defendant, assessing plaintiff's damages at the sum of three hundred twenty-one and $\frac{94}{100}$ dollars ($321.94).

That thereafter a motion was made by said defendant for a new trial before said court, and on December 22nd, 1898, the said motion was by R. F. Webber, the judge of said court, denied, and the order denying the same was duly filed in said court on the 24th day of December, 1898, and on the 24th day of December, 1898, the said defendant duly appealed from the said order filed therein to the supreme court of the State of Minnesota, and on the 30th day of June, 1899, a mandate from the supreme court of the State of Min-

nesota, affirming the decision of the said district court, denying said motion for a new trial was duly filed in this court.

Now, on motion of F. L. Janes, plaintiff's attorney, it is adjudged and ordered, that the plaintiff John W. Watt, have and recover judgment in this action against the said defendant, The First National Bank of Lake Benton, for the sum of three hundred twenty-one and $\frac{94}{100}$ dollars ($321.94) damages, and interest thereon, fifteen and six-hundredths dollars ($15.06) and costs and disbursements taxed this day at twenty-five and $\frac{10}{100}$ dollars ($25.10). Total judgment three hundred sixty-two and $\frac{10}{100}$ dollars ($362.10).

Dated July 6th, 1899.

EARNEST SIGVALDSON, *Clerk.*

75 [Endorsed:] No. 1186 State of Minnesota county of Lincoln district court J. W. Watt *vs.* First National Bank of Lake Benton Minn. Judgment-roll. Filed July 6, 1899 Earnest Sigvaldson clerk district court, Lincoln county, Minn.

76 STATE OF MINNESOTA, *County of Lincoln,* } *ss:*

District Court, 9th Judicial District.

JOHN W. WATT, Pl'ff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Minnesota, Def't. } Notice of Appeal.

SIR: You will please take notice, that the above-named The First National Bank of Lake Benton Minnesota defendant appeal to the supreme court of the State of Minnesota, from the judgment of the said district court, entered herein on the 6th day of July 1899, and from the whole thereof.

Dated this 6th day of July A. D. 1899.

JOHN McKENZIE,
Attorney for Defendant.

To F. L. Janes, Esq., attorney for the above-named plaintiff, and to Earnest Sigvaldson, clerk of said district court.

77 11566.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, Minn., Appellant. } No. 125. Opinion.

This action was brought under the national banking act (Rev. St. U. St. pp. 5197, 5198), which provides:—

"SEC. 5197. Any association may take, receive, reserve and charge

on any loan or discount made, or upon any note, bill of exchange or other evidences of debt, interest at the rate allowed by the laws of the State, Territory or district where the bank is located, and no more.

"SEC. 5198. The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same."

The principal question in the case is whether the amount which may be thus recovered back is twice the entire interest paid, or merely double the excess of the interest over the legal rate. We are not aware that this question has ever been passed upon by the
78 Supreme Court of the United States, but it has been almost uniformly held by the United States circuit courts and by the State courts that the amount of the recovery is twice the entire interest paid and not merely double the excess paid over the legal interest. 16 Am. & Eng. Enc. Law, 176, and cases cited. This seems to us to be clearly the correct construction of the statute. It would be extraordinary if Congress intended to provide for a forfeiture of all interest when no usury had been paid, but only allow a recovery of double the excess over legal interest when the interest had been paid. The word "rate" is evidently used in the same sense in both clauses of section 5198. "Greater rate," in the second clause, is the same as "a rate greater" in the first clause, and "the amount of interest thus paid" in the second is the same as "the entire interest" in the first. The entire interest forfeited is just the rate which was contracted for. Upon payment of "a greater rate" than is lawful, "twice the amount of the interest thus paid" is twice the entire interest. To say that only a part of the greater rate (that is, the excess over the lawful rate) is the amount which can be recovered back would be to do violence to the plain language of the statute. Hill *v.* Bank, 15 Fed. 432; Bank *v.* Karmany, 98 Pa. St. 65; Louisville Trust Co. *v.* Kentucky Nat. Bank, 87 Fed. 143. The only authorities we have found to the contrary are Hintermister *v.* Bank, 64 N. Y. 212 (decided, "with hesitation," largely upon the supposed authority of Brown *v.* Bank, 72 Pa. St. 209) and Bobo *v.* Bank, 92 Tenn. 444, 21 S. W. 888, which follows the Hintermister case. Brown *v.* Brown, *supra*, is not in point, the syllabus being misleading. In view of the decision of the same court in Bank *v.* Karmany, *supra*,
79 without even mentioning the Brown case, it would seem that the court did not consider that the latter case decided what was assumed in the Hintermister case.

2. There was no reversible or prejudicial error in admitting in evidence the letter from the defendant's cashier to the plaintiff. The only thing contained in it which had any bearing on the case, or could possibly have influenced the jury, was the cashier's statement

that the amount due on the note was $1,622. He had already testified to and admitted this on his cross-examination, to which there was no exception.

Order affirmed.

MITCHELL, *J.*

Buck, J., absent took no part.

80 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion in the cause therein entitled, as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of June, A. D. 1900.

D. F. REESE, *Clerk.*

81 [Endorsed:] No. 11566. State of Minnesota, supreme court. John W. Watt respondent *vs.* First Nat. Bank of Lake Benton appellant Certified copy of opinion and syllabus (Endorsed:) Filed June 9 1899 D. F. Reese clerk. April term, A. D. 1899 Mitchell J

82 11815.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, Appellant. } No. 25. Opinion.

Per Curiam:

This case was once before this court on appeal by this appellant from an order refusing a new trial. Watt *v.* First National Bank of Lake Benton, 79th N. W. R. 509. The identical questions presented on this appeal from the judgment thereafter entered were presented and argued to this court on the former appeal and decided adversely to appellant herein, and are therefore *res adjudicata.*

As there is a Federal question involved we presume the purpose is to obtain a final judgment in this court.

Judgment affirmed.

83 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion & syllabus in the cause therein entitled, as appears from the original, remaining on file

in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

84 [Endorsed:] No. 11815. State of Minnesota, supreme court. John W. Watt respondent *vs.* First National Bank of Lake Benton appellant. Certified copy of opinion and syllabus. (Endorsed:) Filed April 24 1900. D. F. Reese clerk. April term, A. D. 1900. By the court, —— J.

85 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Appellant. } No. 25.

Pursuant to an order of court duly made and entered in this cause, on the twelfth day of May A. D. 1900—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the ninth judicial district, sitting within and for the county of Lincoln be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the respondent above named, do have and recover of said First National Bank of Lake Benton appellant herein the sum and amount of four hundred twenty-two and $\frac{5}{100}$ dollars ($422.05) costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 12th day of May A. D. 1900.

By the court,

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees, for making return	
Printer's fees	3.00
Clerk's fees, supreme court	10.25
Filing mandate	
Affidavit	.25
Judgment entered in district court Lincoln county July 6, A. D. 1900, in favor of respondent	362.01
Interest thereon at seven per cent. to date	21.54
	$422.05

86 [Endorsed:] 11815 State of Minnesota, supreme court. Transcript of judgment. Filed May 12, A. D. 1900 D. F. Reese clerk.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court at the capitol in the city of St. Paul, this 12th day of May A. D. 1900.

D. F. REESE, *Clerk.*

87 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF Lake Benton, Appellant.

No. 25. Appeal from District Court, Ninth Judicial District, County of Lincoln.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1900, upon the return to the appeal herein.

Now after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be and the same hereby is, in all things affirmed and that the respondent above named have judgment accordingly.

Entered May 12th, A. D. 1900.

By the court.

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

88 [Endorsed:] No. 11815. State of Minnesota, supreme court. Copy of order for judgment. Filed May 12 A. D. 1900. D. F. Reese, clerk. Entered on page —.

89 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1900.

FRIDAY MORNING, 9.30 O'CLOCK, *April 20th, A. D.* 1900.

Court convened pursuant to adjournment. All the justices being present.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF Lake Benton, Appellant. } Cal. No. 25; Reg. No. 11815.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was submitted to the court for decision upon paper book and briefs of counsel and taken under advisement.

A true record.

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

90 [Endorsed:] 11815. State of Minnesota, supreme court. Copy of minutes of argument. Filed May 12 A. D. 1900. D. F. Reese, clerk.

91 [Endorsed:] No. 11815. State of Minnesota, supreme court. John W. Watt respondent against First Nat. Bank of Lake Benton appellant. Judgment-roll. Filed May 12 1900. D. F. Reese, clerk.

92 STATE OF MINNESOTA, *ss:*

Supreme Court.

STATE OF MINNESOTA,
OFFICE OF CLERK OF SUPREME COURT.

I, Darius F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States, that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll and all of the proceedings had in the said supreme court of the State of Minnesota in the case between John W. Watt, respondent, and plaintiff in error, against First National Bank of Lake Benton, Minnesota, appellant, and defendant in error, including the opinions of the said supreme court therein, as appears from the original files and records of said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error, with order allowing the same, and of the bond on the writ of error and approval thereof, and the assignments of error as the same

remain on file and of record in said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

In witness whereof, I have hereunto set my hand and seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 23rd day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

DARIUS F. REESE,
Clerk of the Supreme Court of the State of Minnesota.

93 [Endorsed:] State of Minnesota, supreme court. First National Bank of Lake Benton, plaintiff in error, *vs.* John W. Watt, defendant in error.

Endorsed on cover: File No. 17,826. Minnesota supreme court. Term No. 103. The First National Bank of Lake Benton, Minnesota, plaintiff in error, *vs.* John W. Watt. Filed July 9th, 1900.